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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
3470 Twelfth Street, Riverside, CA 92501  
CIVIL MINUTES -- GENERAL

Case No. ED CV 08-01039-SGL(OPx)

Date: October 30, 2008

Title: JAMES F. SMALL, et al -v- OPERATIVE PLASTERERS' & CEMENT MASONS'  
INTERNATIONAL ASSOCIATION, LOCAL 200, AFL-CIO

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PRESENT: HONORABLE STEPHEN G. LARSON, UNITED STATES DISTRICT JUDGE

Jim Holmes  
Courtroom Deputy Clerk

**ATTORNEYS PRESENT FOR PETITIONER:**  
None Present

**ATTORNEYS PRESENT FOR RESPONDENT:**  
None Present

**PROCEEDINGS: ORDER SETTING HEARING ON RESPONDENT'S EX PARTE  
APPLICATION TO MODIFY INJUNCTION**

On October 24, 2008, respondent filed an ex parte application to modify the preliminary injunction entered in this action on September 15, 2008. The Court sets this matter for hearing on November 17, 2008, at 10:00 a.m., in Courtroom One of the above-referenced Court.

In his opposition, petitioner argues, and the Court tentatively agrees, that in light of the pending appeal of the preliminary injunction, the Court is without jurisdiction to modify the injunction in the manner sought by respondent. See Opp. at 6-7; Fed. R. Civ. P. 62(c) (limiting modifications of injunctions pending appeal only to those that do not change the status quo); McClatchy Newspapers v. Central Valley Typographical Union No. 46, 686 F.2d 731, 734 (9th Cir.1982) (noting that Rule 62(c) "does not restore jurisdiction to the district court to adjudicate anew the merits of the case after either party has invoked its right of appeal and jurisdiction has passed to an appellate court."); Natural Resources Defense Council, Inc. v. Southwest Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001) (stating that a district court's power pursuant to Rule 62(c) does not include the ability to "materially alter the status of the case on appeal.").

Respondent is directed to file, no later than November 6, 2008, a reply addressing this issue. Petitioner may file a response no later November 12, 2008. Counsel are reminded of their obligation, pursuant to General Order 08-02, to provide to chambers paper courtesy copies (as defined by § II.T.) of all e-filed documents in the manner described in § IV.D.

**IT IS SO ORDERED.**